U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: SEP 0 5 2014 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

APPLICATION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A).

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition on September 26, 2005. On November 16, 2005, the petitioner filed an appeal. On January 10, 2006, the director rejected the appeal as untimely, accepted the filing as a motion to reopen and reconsider, and affirmed his previous denial of the petition. The petitioner appealed that decision on February 7, 2006. On March 7, 2007, the Administrative Appeals Office (AAO) issued a notice advising the petitioner of derogatory information and our intent to make a finding of misrepresentation. On May 4, 2007, we affirmed the director's adverse decision on the petition and issued a formal finding of misrepresentation, finding unconvincing the petitioner's assertion that she was unaware of the submission of false documents. Approximately four years later, in 2011, the petitioner filed her first motion to reopen and reconsider. On December 5, 2012, we dismissed the motion for multiple reasons, including that it was untimely. The petitioner now files a second motion to reopen and reconsider. Our previous decisions will be affirmed, and the petition will remain denied.

Regarding motions to reopen or reconsider, 8 C.F.R. § 103.5(a)(1)(ii) states in relevant part: "The official having jurisdiction is the official who made the latest decision in the proceeding unless the affected party moves to a new jurisdiction." The latest decision was the December 5, 2012 decision dismissing the motion. Therefore, a review of any claims or assertions that the petitioner's instant motion raises is limited in scope and is restricted to that decision.

To the extent that the petitioner intends the current motion to be a motion to reopen, motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *Abudu*, 485 U.S. at 110. A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

Along with the instant motion, the petitioner has submitted supporting evidence, some of which she had previously submitted, to demonstrate that she lacked knowledge about the misrepresentation relating to her Form I-140 petition and to demonstrate that she was represented by attorney or individuals associated with who she claims had submitted the fraudulent documents. The petitioner submits the following evidence:

1. The petitioner's affidavit;
2. The petitioner's spouse's affidavit;
3. A business card for indicating an affiliation with the
4. A copy of the petitioner's spouse's June 2006 Form I-140 petition, listing as the preparer and bearing his signature;
5. A copy of the petitioner's spouse's June 2006 Form I-485 application, listing as the preparer and bearing his signature;
6. An August 30, 2003 Retainer Agreement between the petitioner's spouse and including an ' stamp;
7. An incomplete faxed photocopy of a Form I-290B that purportedly constituted the petitioner's appeal of the director's January 10, 2006 adverse decision;

8. A copy of a December 2006 filing receipt for the petitioner's Form I-765 application addressed to
9. An October 14, 2005 letter from the U.S. Department of Labor (DOL) relating to an Application for Permanent Employment Certification (Form ETA 9089) filed on behalf of the petitioner that was addressed to
10. An August 13, 2010 letter from the Departmental Disciplinary Committee of the New York Supreme Court, relating to the petitioner's ineffective assistance of counsel claim against and
11. Various articles and court documents relating to criminal investigations and charges against and individuals associated with his law offices, including

Item 3 from the above list, a photocopy of a business card is not new evidence. The petitioner's prior motion included the photocopy, and it was fully considered in our December 5, 2012 decision. Significantly, item 3 does not establish that or any of his associates represented the petitioner for purposes of her Form I-140 petition because any person without an agreement with may be in possession of the business card.

Similarly, we have previously considered item 6 in these proceedings. Again, the retainer agreement establishes that had agreed to represent the petitioner's spouse through the labor certification process, but does not in any way indicate that the petitioner had a legal agreement with Therefore, items 3 and 6 are not new evidence and provide no new facts.

The petitioner for the first time in these proceedings submits item 7, which she asserts is a faxed photocopy of the Form I-290B that constituted her appeal of the director's January 10, 2006 decision. The petitioner asserts that this document establishes that prepared her Form I-140 petition and represented her on matters related to the Form I-140 petition before the U.S. Citizenship and Immigration Services (USCIS). The petitioner states that the legend stamped on the bottom of the document shows that the form was prepared by The legend at the bottom of the document includes the fax date February 4, 2006 and the text "FROM: . . TO: EARL EFAX P.3/3." In her affidavit accompanying the motion (item 1), the petitioner states that the document does not bear her signature and specifically requests us to compare the signature on that document with previous and current affidavits or other immigration forms. However, there is nothing on the faxed photocopy of the Form I-290B to indicate that the the petitioner or anyone else submitted this form to USCIS or that USCIS accepted this document as an effective appeal of the January 10, 2006 decision.

In contrast, the record includes the original Form I-290B filing, which the petitioner signed and submitted to USCIS via express mail, not fax. The document is an original document, not a photocopy, which bears no resemblance to item 7. The original document bears no legend at the bottom of the page and the Center Director of the Vermont Service Center stamped it as being received on February 6, 2007. As such, the stamped document is the Form I-290B that USCIS accepted as a properly filed appeal of the January 10, 2006 decision. The original document filed with USCIS is a different document from the faxed photocopy (item 7) that the petitioner now

submits and asserts is the Form I-290B that constituted the appeal. The properly filed Form I-290B does not include the name of any representing attorney. Rather, it bears the original signature of the petitioner, which is consistent in appearance with every other affidavit and immigration form that the petitioner has submitted to USCIS. Therefore, item 7 lacks probative value and is not objective, credible evidence showing that or individuals associated with him, represented the petitioner on matters relating to her Form I-140 petition.

The petitioner claims in her affidavit that and individuals associated with him, including went to great lengths to ensure that they created no record of their representation. The petitioner and her husband have attested that and individuals associated with him assisted in preparing Form I-140 petitions, work authorization applications, and Form I-485 applications for both of them. The evidence indicates that issued a retainer agreement to the petitioner's spouse on August 30, 2003 (item 6). The petitioner's spouse's Form I-140 petition (item 4) and Form I-485 application (item 5) bear signature. The receipt from USCIS for the petitioner's Form I-765 application (item 8) is addressed to as does the letter from the DOL discussing the petitioner's labor certification (item 9), indicating that entered his representation before each agency for purposes of the Form I-765 application and the labor certification. In short, the record includes credible, independent evidence showing that entered his representation for every application that the petitioner asserts he prepared for her or her husband – with the exception of the petitioner's Form I-140 petition. The record of evidence, on the whole, does not indicate that was reluctant to enter his representation before USCIS. Furthermore, there is nothing in the numerous articles or court documents relating to the conduct of showing that he had a pattern or practice of intentionally declining to enter his representation before USCIS. In short, the petitioner has not established with objective, credible evidence that an attorney prepared her Form I-140 petition or represented her in any matter related to the petition, including the appeal.

Regarding the petitioner's claim that she had no knowledge of the misrepresentation in connection to her Form I-140 petition, as we noted in our May 4, 2007 and December 5, 2012 decisions, the petitioner, by signing her petition, certified under penalty of perjury that the petition and the evidence submitted with it are all true and correct. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 28 U.S.C. § 1746 and 18 U.S.C. § 1621. As noted in our December 5, 2012 decision, the envelopes for prior submissions bear her return address. In response, the petitioner asserts that whom she claims to be associated with (item 3), provided her sealed envelopes with her address as the return address to submit to USCIS. First, as discussed, the petitioner has not submitted any evidence that an attorney represented her with her Form I-140 petition in addition to her husband's separate petition. Regardless, the petitioner's failure to apprise herself of what was submitted in support of her own petition constitutes deliberate avoidance and does not absolve her of responsibility for the content of her petition or the materials submitted in support of her petition. *See Hanna v. Gonzales,* 128 F. App'x 478, 480 (6th Cir. 2005) (finding that an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application's contents). *Cf., Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.,* 498 U.S. 533 (1991) (finding that a represented party who signs his or her name to documents filed in court bears personal, non-delegable responsibility to

certify truth and reasonableness of the documents and failure to meet that duty subject signor to Rule 11 sanctions). The law generally does not recognize deliberate avoidance as a defense to misrepresentation. *See Bautista v. Star Cruises,* 396 F.3d 1289, 1301 (11th Cir. 2005); *United States v. Puente,* 982 F.2d 156, 159 (5th Cir. 1993).

To the extent the petitioner intends the current motion to be a motion to reconsider, motions for reconsideration must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the original decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). In essence, a motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new evidence. *Compare* 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(2). As an initial matter, the petitioner includes assertions relating to claims of ineffective assistance of counsel. Specifically, in the brief supporting the motion, the petitioner asserts that our December 5, 2012, decision erroneously determined that the petitioner failed to satisfy the requirements under *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). Our December 5, 2012 decision, however, specified that our May 4, 2007 decision determined that the petitioner failed to satisfy the requirements of *Lozada* and that the petitioner's first motion filed in 2011 did not challenge findings from our May 4, 2007 decision. Any challenges to our findings relating to the petitioner's *Lozada* claim should have been included in the petitioner's first motion. As the petitioner's first motion before us did not challenge our prior findings regarding the requirements for an ineffective assistance of counsel claim and in light of 8 C.F.R. § 103.5(a)(1)(ii), any arguments relating to ineffective assistance of counsel based on *Matter of Lozada* is not properly before us in the current motion. Moreover, the petitioner has not established that an attorney prepared her Form I-140 petition or otherwise represented her in connection with the petition. As discussed, the retainer agreement is between ' and her husband and while signed some documents as the preparer, neither Jed David Philwin nor anyone associated with him signed the petitioner's Form I-140 petition or the Form I-290B filed on February 7, 2006. Accordingly, the petitioner may not rely on an ineffective assistance of counsel claim that is based upon the preparation and representation of her Form I-140 petition, which lists no preparer and she alone signed.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed, the AAO's December 5, 2012 decision is affirmed, and the petition remains denied.